

W.P.No.34792 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.12.2020

CORAM:

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. No.34792 of 2018

and

W.M.P.No.40352 of 2018

Incorporated Chit Funds Association
Rep. by its Secretary A.Chitrarasu
No.6, Amaravathy Nagar Main Road,
Arumbakkam, Chennai – 600 106.

... Petitioners

vs.

1.State of Tamil Nadu
Rep. by its Secretary,
Department of Finance,
Fort St. George,
Chennai – 600 009.

2.The Secretary
Department of Commercial Taxes and Registration,
Fort St. George,
Chennai – 600 009.

3.The Registrar of Chits
No.100, Santhome High Road,
Pattinapakkam, Chennai – 600 028.

... Respondents

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of declaration declaring the Government Order in G.O.Ms.No.176, Commercial Taxes and Registration (G), dated 29.11.2017 and published in the Tamil Nadu Government Gazette Part III Section 1(a) dated 13.12.2017 for amending the Appendix II to the Tamil Nadu Chit Fund Rules 1984 as arbitrary, capricious and unconstitutional.

For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.T.M.Pappiah
Spl. Govt. Pleader

ORDER

SENTHILKUMAR RAMAMOORTHY J.,

Appendix II of the Tamil Nadu Chit Fund Rules, 1984 (the TN Chit Funds Rules) was substituted by an amendment thereto which was effected by G.O.Ms.No.176, Commercial Taxes and Registration (G), dated 29.11.2017 in exercise of powers conferred by Section 89 read with Section 62 and 63 of the Chit Funds Act, 1982 (the Chit Funds Act). The said amendment is challenged in this writ petition on the ground that it is arbitrary, capricious and unconstitutional. Although the amendments to Appendix II as a whole are challenged in the writ petition, at the time of hearing, the learned counsel for the Petitioner confined the challenge to the

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amendment to Clause 12 of the Appendix which deals with disputes before the Arbitrator. Previously, the fee payable by the Petitioner was Rs.30/- for every thousand or part thereof of the amount of claim in dispute. By the impugned amendment, the fee was increased to Rs.50/- for every thousand or part thereof of the amount of claim in dispute. In other words, the fee was increased from 3% of the amount claimed to 5% of the amount claimed. The said increase is challenged on the ground that it is an exorbitant increase which would cause immense hardship whether the claim is made by the foreman or by the subscribers to a chit fund. In this regard, it is submitted that the jurisdiction of the civil court has been ousted under the Chit Funds Act. If parties were in a position to approach the civil court, the court fee would be 3% of the amount claimed, whereas, as a result of the amendment, the court fee is 5% of the amount claimed. In fact, if filed in the High Court, the court fee would be only 1% of the amount claimed. Therefore, the Petitioner has challenged the amendment to Appendix II of the TN Chit Funds Rules.

2. We heard Mr.A.Muthukumar, the learned counsel for the Petitioner and Mr.T.M.Pappiah, the learned Special Government Pleader for the Respondents.

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3. Mr.Muthukumar submitted that he is confining the challenge to the amendment to Clause 12 of Appendix II which deals with fees for raising a dispute before the Arbitrator. He pointed out that the chit fund business is a low margin business and therefore the imposition of a fee at 5% of the amount claimed is arbitrary and would cause considerable hardship to parties who intend to raise a dispute by way of arbitration. He invited the attention of the Court to Section 64 of the Chit Funds Act which deals with disputes relating to the chit business. He pointed out that a claim by or against the foreman for any debt due from a subscriber or from the foreman would lie before the arbitrator. Similarly, a claim by a surety from the principal borrower in respect of a loan advanced by a foreman and recovered from the surety would also lie before the arbitrator. Likewise, claims arising out of refusal or failure by a subscriber or legal heirs or representatives of a deceased subscriber to deliver possession to a foreman of land in respect of surety offered would also lie within the scope of arbitration under Section 64. Under Section 64(3), the jurisdiction of the civil court is ousted in respect of the dispute specified in Sub Section (1) of Section 64. Therefore, Mr.Muthukumar submitted that but for Section 64(3) an aggrieved person could have approached the civil court by paying

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a court fee at 3% of the amount claimed. Instead, such person is constrained to approach the arbitrator and, as a result of the impugned amendment, becomes liable to pay *ad valorem* fees at 5% of the amount claimed. The next contention of Mr.Muthukumar is that the impugned amendment has been made under Section 62 and 63 of the Chit Funds Act. Section 62 deals with inspection of documents in the Registrar's Office. Although section 63 deals with levy of fees, he contended that it does not deal with the levy of fees in relation to a dispute before the arbitrator under the Chit Funds Act. Even with regard to the rule making power under Section 89 of the Chit Funds Act, he submitted that the power under Section 89(2)(k) is limited to the fees payable under Section 63 and it does not extend to fees in respect of a dispute under Section 64.

4. In support of his submissions, he relied upon the judgment of the Hon'ble Supreme Court in **Krishi Upaj Mandi Samiti and others v. Orient Paper and Industries Ltd (1995) 1 SCC 655 (Krishi Upaj Mandi Samiti)**. On the basis of the said judgment, he contended that it is necessary that *quid pro quo* should be established as between the service rendered and fee collected. In particular, he referred to paragraph 21 of the said

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judgment, wherein the Hon'ble Supreme Court formulated the principles pertaining to the imposition of a fee and the difference between a tax and a fee. In the present case, he pointed out that there is no correlation between the service provided by the Registrar of Chit Funds and the fees levied for the resolution of disputes. In particular, there is no justification for the exorbitant increase in fee from 3% of the amount claimed to 5% of the amount claimed. The learned counsel also raised an ancillary submission to the effect that the Arbitration and Conciliation Act, 1996 (the A&C Act) contains model fees under the 4th Schedule. As per the 4th Schedule, depending upon the aggregate value of the claim, a maximum of 3 1/2% of the amount claimed is prescribed. By contrast, he submitted that Clause 12 of Appendix II imposes an *ad valorem* fee of 5%.

5. On the contrary, Mr.Pappiah submitted that the last revision of fees was in the year 2011. Therefore, there is an interval of six years between the previous fee revision and the current fee revision. In the interregnum, there has been considerable inflation and the expenditure of the Registrar of Chit Funds has increased manifold, thereby justifying and necessitating the fee revision. By drawing reference to the counter affidavit,

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he pointed out that out of the 8886 chit fund related arbitration cases that were filed in Tamil Nadu in the year 2017 – 2018, 8882 cases were filed by the foreman against the subscribers or sureties and only four cases were filed by the subscribers/sureties. Therefore, in all the cases filed by the foreman, summons were issued to the defaulting subscribers/sureties and to the witnesses. Besides, whenever the subscriber/surety is not traceable, paper publications are made in reputed dailies. In cases wherein it is necessary to attach property, orders of attachment before judgment are issued and the attachment order is served to the Sub Registrar concerned. In effect, Mr.Pappiah contends that there is no doubt that services are provided by the Registrar of Chit Funds in relation to the resolution of disputes. Therefore, there is broad correlation as between the fee collected and the service rendered.

6. With regard to the power to frame and amend the Rules, he pointed out that Section 89 of the Chit Funds Act confers power on the State Government to make rules in consultation with the Reserve Bank of India. Under Section 89(2), the rule making power extends to the fee payable under Section 63, the procedure to be followed by the Registrar or his

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nominee for settling disputes under Section 64 and any other matter for which rules should be prescribed. He also submits that on a combined reading of Sections 63,64, 89 and Rules 45 to 47, it is beyond doubt that the State Government is empowered to frame rules in respect of the fee payable either for the settlement of disputes or for the various activities that are dealt with in Appendix II. For all these reasons, he submits that the writ petition is liable to be rejected.

7. We considered the submissions of the learned counsel for the respective parties and examined the materials on record.

8. The principal question that arises for consideration is whether the impugned amendment is liable to be struck down as unconstitutional. In order to decide this question, it is necessary to examine whether the State Government was empowered to frame the amended rules relating to the levy of fees. Section 63,64 and 89 of the Chit Funds Act are relevant in this regard. Therefore, the said Sections are set out here under:

“63. Levy of fees.—(1) There shall be paid to the Registrar such fees as the State Government may, from time to time, prescribe for,—

(a) the issue of previous sanction under section 4;

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- (b) the filing of the chit agreement with the Registrar and the registration of the chit under section 7;
 - (c) the filing of a declaration with the Registrar and the grant of a certificate of commencement under section 9;
 - (d) the filing of copies of documents under any of the provisions of this Act;
 - (e) the audit of the accounts of the foreman under section 61;
 - (f) the inspection of documents under section 62;
 - (g) the obtaining of certified copies or extracts of documents and records under section 62; and
 - (h) such other matters as may appear necessary to the State Government.
- (2) A table of fees prescribed under sub-section (1) shall be exhibited on a notice-board in the office of the Registrar.”

“64. Disputes relating to chit business.— (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the management of chit business shall be referred by any of the parties to the dispute, to the Registrar for arbitration if each party thereto is one or the other of the following, namely:—

- (a) a foreman, a prized subscriber or a non-prized subscriber, including a defaulting subscriber, past subscriber or a person claiming through a subscriber, or a deceased subscriber to a chit;
- (b) a surety of a subscriber, past subscriber, or a deceased subscriber.

Explanation—For the purposes of this sub-section, a dispute touching the management of a chit business shall include,

- (i) a claim by or against a foreman for any debt or demand due to him from a subscriber, or due from him to a subscriber, past subscriber or the nominee, heir or

legal representative of a deceased subscriber whether such debt or demand is admitted or not;

(ii) a claim by a surety for any sum or demand due to him from the principal borrower in respect of a loan by a foreman and recovered from the surety owing to the default of the principal borrower, whether such sum or demand is admitted or not; and

(iii) a refusal or failure by a subscriber, past subscriber or the nominee, heir or legal representative of a deceased subscriber to deliver possession to a foreman of land or any other asset resumed by him for breach of conditions of the assignment.

(2) Where any question arises as to whether any matter referred to for the award of the Registrar is a dispute or not for the purposes of sub-section (1), the same shall be decided by the Registrar whose decision thereon shall be final.

(3) No civil court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).

89. Power to make rules.— (1) The State Government may, in consultation with the Reserve Bank, by notification in the Official Gazette, make rules for giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which an application for obtaining the previous sanction may be made under sub-section (2) of section 4;

- (b) the additional particulars that a chit agreement may contain under clause (q) of sub-section (1) of section 6;
- (c) the particulars that may be included in the minutes of the proceedings of a draw under section 17;
- (d) the method of valuation by the Registrar in a grain chit for the purpose of furnishing security under section 20;
- (e) the procedure that may be followed by the Registrar in releasing the security furnished by the foreman under section 20;
- (f) the registers and books and the form in which such registers and books may be maintained by the foreman under section 23;
- (g) the time within which the balance-sheet and the profit and loss account in respect of a chit business shall be filed under section 24;
- (h) the rate at which interest shall be payable on the defaulted instalments by a defaulted subscriber under section 28;
- (i) the particulars that may be included in an application for the winding up of chits under section 49;
- (j) the procedure to be followed for the winding up of chits under Chapter X;
- (k) the fees payable under section 63;
- (l) the auditing of balance-sheet and the profit and loss accounts of chit business and the issue of audit certificates;

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- (m) the form and manner in which a dispute shall be referred to the Registrar under section 64;
- (n) the procedure to be followed by the Registrar or his nominee for settling the disputes referred to him under section 64;
- (o) the matters referred to in clause (f) of sub-section (1) of section 67;
- (p) the conditions subject to which and the amount on the payment of which composition of offences may be made under section 81;
- (q) the form and manner in which an appeal may be preferred under this Act and the fees payable for such appeal;
- (r) the issue and service of notices or other process under this Act;
- (s) the procedure for, and the manner of, receiving any sum payable under this Act;
- (t) any other matter which is required to be or may be prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before the House.”

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Upon perusal of the aforesaid Sections, we find that Section 63 enables the State Government to prescribe payment of fees to the Registrar in respect of various matters set out in Clauses 'a' to 'h' of Sub-section (1) of Section 63. Clause 'h' is the residuary clause which deals with such other matters as may appear necessary to the State Government. Section 64 deals with disputes relating to the chit business and encompasses disputes between a foreman (the person who represents the Chit Funds) and a subscriber or surety. Section 66 provides for the settlement of disputes either by the Registrar himself or by a person appointed by him. Section 89 (1) empowers the State Government to make rules to give effect to the provisions of the Act in consultation with the Reserve Bank of India. Thus, Sub-section (1) of Section 89 is couched in wide terms and the only limitation is that the rule should be for the purposes of giving effect to the provisions of the Chit Funds Act. Sub-section (2) thereof is without prejudice to the generality of Sub-section (1). Clause 'k' of Sub-section (2) enables the State Government to frame rules relating to the fees payable under Section 63. Clause 'm' enables the framing of rules relating to the form and manner in which a dispute shall be referred to the Registrar under Section 64. Clause 'n' enables the framing of rules in respect of the procedure to be followed by

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the Register or his nominee for settling the disputes referred to him under Section 64. Clause 'q' enables the framing of rules in respect of the form and manner in which an appeal may be preferred under the Chit Funds Act and the fees payable for such appeal. Clause 's' pertains to framing of rules in respect of the procedure for, and the manner of, receiving any sum payable under this Act. Clause 't' is the residuary clause and enables the framing of rules in respect of any other matter which is required to be or may be prescribed. Upon consideration of Sections 63,64,66 and 89 cumulatively, in our view, the State Government, undoubtedly, has the power to frame rules in relation to the fixation of fees for the resolution of disputes under Section 64 of the Chit Funds Act. In this connection, it is also pertinent to note that the challenge by the Petitioner is only to the increase in fees from 3% to 5% *ad valorem*.

9. The next issue to be considered is whether the fee is unconstitutional because it is in the nature of a tax or is otherwise arbitrary. The law on this issue is no longer *res integra*. The traditional and classical distinction between a tax and fees no longer holds the field, and the law requires no more than a broad correlation as between services provided and

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fees charged. Instead of multiplying authorities on this issue, it is sufficient to refer to the judgment of the Hon'ble Supreme Court in **Krishi Upaj Mandi Samiti** , which was referred to by the learned counsel for the Petitioner. As stated earlier, the Hon'ble Supreme Court captured the relevant principles in paragraph 21. For the purposes of this case, it is sufficient to reproduce Clause 7 of paragraph 21, which is as under:

“(7) It is not a postulate of a fee that it must have relation to the actual service rendered. However, the rendering of service has to be established. The service, further, cannot be remote. The test of *quid pro quo* is not to be satisfied with close or proximate relationship in all kinds of fees. A good and substantial portion of the fee must, however, be shown to be expended for the purpose for which the fee is levied. It is not necessary to confer the whole of the benefit on the payers of the fee but some special benefit must be conferred on them which has a direct and reasonable correlation to the fee. While conferring some special benefits on the payers of the fees, it is permissible to render service in the general interest of all concerned. The element of *quid pro quo* is not possible or even necessary to be established with arithmetical exactitude. But it must be established broadly and reasonably that the amount is being spent for rendering services to those on whom the burden of the fee falls. There is no postulate of a fee that it must have a direct relation to the actual services rendered by the authorities to each individual to obtain the benefit of the service. The element of *quid pro quo* in the strict sense is not always a *sine qua non* for a fee. The element of *quid pro quo* is not necessarily absent in every tax. It is enough if there

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is a broad, reasonable and general corelationship between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is immaterial that the general public may also be benefited from some of the services if the primary service intended is for the payers of the fees.”

10. Thus, it is clear that it is sufficient if the rendering of service and a broad correlation as between the service and the fees is established. Upon perusal of Sections 64, 66 to 72 of the Chit Funds Act, the substantial role of the Registrar of Chit Funds in the resolution of disputes is evident. In addition, the Respondents have set out the services provided by the Registrar as regards resolution of disputes in paragraph 7 of the counter affidavit. The learned counsel for the Petitioner is unable to dispute the fact that such services are provided by the Registrar of Chit Funds. As such, the requirement of the provision of services and a broad correlation as between the service rendered and the fee charged is established. In addition, Mr.Pappaiah pointed out that the previous revision was in the year 2011 and that the present revision is made after an interval of six years on account of the increase in costs in the interregnum. He further submitted that such increase was decided upon as a policy decision after taking into

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consideration all relevant and material facts. In our view, the said contention is well founded and liable to be accepted.

11. The contention of the learned counsel for the Petitioner is that a 3% court fee is being levied in the civil courts in Tamil Nadu and that, therefore, the levy of 5% *ad valorem* fee is arbitrary. The said contention is untenable because the Chit Funds Act provides for the speedy resolution of disputes and the nature of services provided under the Chit Funds Act cannot be compared with or equated with that of civil courts. Similarly, the amendment to Appendix II cannot be said to be arbitrary merely because Schedule IV of the A&C Act provides for a lower percentage of *ad valorem* fees. Typically, the amount claimed in arbitration proceedings under the A&C Act is much larger than the amounts claimed in proceedings under the Chit Funds Act. Therefore, a comparison of the *ad valorem* fee percentage as between arbitration under the A&C Act and the Chit Funds Act is invidious and untenable. Hence, it cannot be said that the equality clause of the Constitution is violated.

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12. For the reasons aforesaid, we are of the view that the Petitioner has completely failed to make out a case to declare the amendment to Appendix II of the Tamil Nadu Chit Funds Rules as unconstitutional.

13. In the result, the challenge fails and the writ petition is dismissed. Consequently, the connected miscellaneous petition is closed.

No costs.

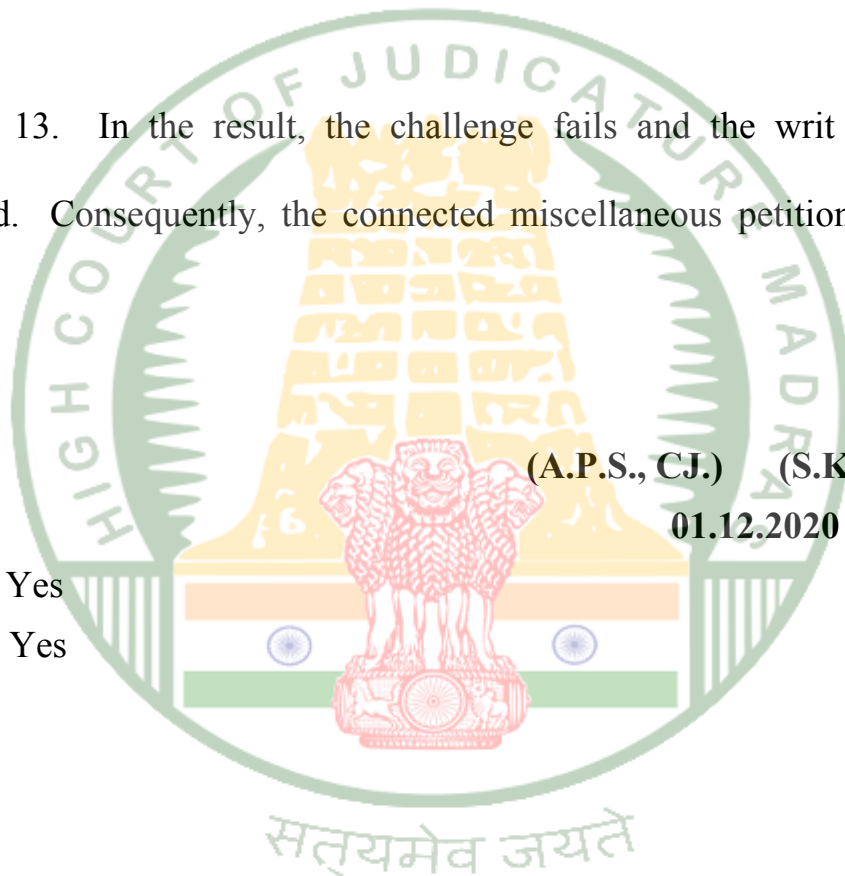
(A.P.S., CJ.) (S.K.R. J.)

01.12.2020

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To

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**THE HON'BLE CHIEF JUSTICE
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SENTHILKUMAR RAMAMOORTHY J.**

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**Order in
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